



STATE PUBLIC DEFENSE COMMISSION

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*The price of freedom is eternal vigilance.
-Thomas Jefferson*



BRIEF HISTORY

- ❖ Established in 2014 by the passage of House Bill 542 – Idaho Public Defense Act
 - Added/Amended Idaho Code §§ 19-847 – 19-866
- ❖ Seven Member Commission
 - Appointed by different authorities
 - No appointees may be a prosecuting attorney or a current employee of law enforcement agency
- ❖ Staff: Executive Director and other personnel
- ❖ Result of the Public Defense Reform Interim Committee following a three-year study prompted by the Idaho Criminal Justice Commission



POWERS AND DUTIES BEFORE HB504

- ❖ Promulgate rules related to training and CLE requirements
- ❖ Promulgate rules related to uniform data reporting requirements
- ❖ Make recommendations to the Idaho Legislature
 - Core requirements for PD contracts
 - Qualifications and experience standards for PDs
 - Enforcement mechanisms
 - Funding issues



EXPANSION OF PDC'S POWERS AND DUTIES

- ❖ *Tucker v. State of Idaho*
 - Plaintiffs: Four (Bonner, Shoshone, Ada, and Payette Counties)
 - Defendants: Governor and the individual members of the PDC
 1. Lack of resources
 2. Limited communication with attorney
 3. Lack of defending attorneys at initial appearances
 4. Flat-fee contracts – disincentive to hire experts or investigators
 5. Excessive caseloads



SIXTH AMENDMENT RIGHT TO COUNSEL

- ❖ *Powell v. Alabama* (1932)
 - Capital cases
 - Special circumstances: ignorance, feeblemindedness, illiteracy or the like
- ❖ *Gideon v. Wainwright* (1963)
 - Felony cases
 - Fundamental fairness
 - Fair Trial
- ❖ *Argersinger v. Hamlin* (1972)
 - Actual imprisonment
- ❖ *Alabama v. Shelton* (2002)
 - Any chance of the deprivation of liberty



SIXTH AMENDMENT RIGHT TO COUNSEL

- ❖ When does it apply?
 - Critical Stages, including but not limited to:
 - Custodial interrogation
 - Initial Appearance
 - Preliminary Hearing
 - Arraignment
 - Trial
 - Sentencing
 - Appeal



EFFECTIVE ASSISTANCE OF COUNSEL

- ❖ A defendant is entitled to effective counsel who has knowledge of defendant rights and capable of presenting defenses to which the accused is entitled
- ❖ If counsel does not effectively represent a defendant, a conviction could be overruled upon appeal because of the denial of assistance of counsel
- ❖ *Strickland v. Washington* (1984)

WHAT HOUSE BILL 504 ACCOMPLISHED

Improving the delivery of trial-level indigent defense services by providing funding and creating standards with which counties must comply.

POWERS AND DUTIES - IDAHO CODE §19-850

Shall Promulgate rules related to:

- ❖ Training and CLE requirements
- ❖ Uniform data reporting requirements and model forms
- ❖ Model contracts and core requirements for contracts
- ❖ Allowing counties to apply for a PDC Grant to come into compliance with standards

POWERS AND DUTIES - IDAHO CODE §19-850

Shall Promulgate rules related to:

- ❖ Administrative procedure act
- ❖ Procedures for oversight, implementation, enforcement and modification of indigent defense standards
- ❖ Standards for defending attorneys
 - Idaho's Principles of Public Defense Delivery System

POWERS AND DUTIES - IDAHO CODE §19-850

- ❖ Make recommendations to the Legislature
 - Enforcement mechanisms
 - Funding issues including calculation of local shares and state indigent defense grants
- ❖ Review indigent defense providers and defending attorneys to evaluate compliance
- ❖ Establish temporary procedures and model forms for indigent defense grants

POWERS AND DUTIES - IDAHO CODE §19-850

- ❖ Hire an Executive Director and other personnel
- ❖ Provide training and CLE for indigent defense providers and defending attorneys
- ❖ Establish procedures for providing extraordinary litigation costs to counties
- ❖ Hire private counsel to represent the PDC in hearings per administrative procedure act and rules promulgated in this section



THE PDC IN 2016



ANNUAL REPORT - EXECUTIVE SUMMARY

- ❖ Training for Defending Attorneys – p. 16
- ❖ Collaborating with Idaho's Counties – p. 16
- ❖ Submission of Rules – p. 20
 - Training Rule
 - Standards for Defending Attorneys
- ❖ Inaugural Indigent Defense Grants – p. 22
- ❖ Going Forward – p. 24
 - Workload study

\$3,819,346.99
FY2017

Indigent Defense Grants

\$100,000.00
FY 2017

Joint County Incentive Grants

\$92,552.00
FY2016

Training for Defending Attorneys



Indigent Defense Expenditures



COUNTY SUMMARY

- ❖ 43 of 44 counties applied for an Indigent Defense Grant
- ❖ All counties who applied were eligible
- ❖ 20 counties were eligible for more than \$25,000
- ❖ 4 counties applied for a joint grant award
- ❖ 12 counties have institutional offices
- ❖ No counties contract with an existing office of public defender
- ❖ Only 8 counties did not experience increased budgets between FY2011 and FY2015



BIGGEST COUNTY CONCERNS

- ❖ Concerns surrounding the ever-increasing costs for providing indigent defense services
- ❖ The feasibility of having defending attorneys at initial appearances
- ❖ Concerns about the permanence of Indigent Defense Grant funding
- ❖ Desire to have “extraordinary litigation costs” defined
- ❖ Annual Report – pp. 16 - 18



RECOMMENDATIONS

- ❖ Indigent Defense Grants
- ❖ Revision to FY2017 Budget
- ❖ The Commission asks the legislature to provide guidance regarding the following issues:
 - The addition of the PDC to agencies exempt pursuant to Idaho Code §74-124(1)(b).
 - Additional state monies for discretionary grants such as the Extraordinary Litigation Fund



RECOMMENDATIONS

- ❖ The Commission asks the legislature to provide guidance regarding the following issues:
 - Recalculation of Local Share as defined by Idaho Code §19-862A to increase the amount for which counties are eligible
 - The possibility of additional monies to offset the costs of increased budgets due to the banning of fixed-fee contracts
 - Additional members of the Commission to increase representation from rural areas



GOING FORWARD ...

- ❖ Workload Study
- ❖ Promulgate additional rules
- ❖ Educating stakeholders
- ❖ Training defending attorneys
- ❖ Define “extraordinary litigation costs”



THANK YOU FOR YOUR TIME!
Any questions?



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